IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO.3503 OF 1989.
DECIDED ON 05.12.2007.

Dr.Raj Dulari Garg, P.C.M.S.-II, presently posted as Medical Officer, Charitable Kewal Krishan Memorial Hospital, Sunam, District Sangrur.

.....Petitioner.

Versus

1. The State of Punjab through Secretary to Government Punjab, Health & Family Welfare Department, Chandigarh.

2. Director, Health & Family Welfare, Punjab, Chandigarh.

.....Respondents.

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CORAM: HON'BLE MR.JUSTICE SHAM SUNDER.

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Present: Mr.Ashok Gupta, Advocate, for the petitioner.

Mr.S.S.Sahu, AAG Punjab, for the respondents.

JUDGMENT:

The petitioner was appointed as Medical Officer on ad-hoc basis, in the State of Punjab for six months on 22.03.1976. On 10.04.1980, the services of the petitioner were regularized as Medical Officer, in P.C.M.S.-II. The services of the petitioner were governed by PCMS-II (Recruitment and Conditions of Service) Rules, 1943 and the Punjab Civil Services Rules. At the time of original entry into government service i.e. in the month of March, 1976, the petitioner was medically examined by the Standing Medical Board on 05.03.19976, and she was declared medically fit. The State of Punjab issued instructions on 09.09.1976, regarding the grant of maternity leave to women employees of the Punjab

government. The petitioner applied for maternity leave, from 01.07.1976 to 30.11.1976. The same was recommended by the Civil Surgeon, Sangrur, to the Director Health and Family Welfare, Punjab. Ultimately, she was granted maternity leave. She gave birth to her first child. The petitioner reported back for duty, after availing of maternity leave on 07.11.1976. She was granted the salary as per the provisions of Rules, for the period of his maternity leave. The petitioner lateron availed of study leave from 29.01.1982 to 31.12.1982 for doing diploma in Gynecology and Obstetrics during the session of 1982. Letter (annexure P-2) was issued by the Civil Surgeon, Sangrur, to the petitioner, that the maternity leave from 01.07.1976 to 06.11.1976 could not be granted to her, in accordance with Circular Letter No.4285SII(3)-73/27201dated 31.08.1973 and she was informed that she had been granted extraordinary leave for the said period. It was further directed vide letter (annexure P-3) that recovery from the pay of the petitioner, for the period from 01.07.1976 to 06.11.1976 be made. It was further directed that annual increments be not granted to the petitioner, till she deposited the pay, for the period 01.07.1976 to 06.11.1976 in the Government Treasury. The petitioner challenged the said order (Annexure P2) by way of Civil Writ Petition No.4650/1986, in this Court. At the motion stage, the Counsel for the State of Punjab made a statement, before this Court, that the impugned order had been withdrawn and consequently, the writ petition was dismissed, as having become infructuous, vide order dated 16.12.1986 (annexure P-4). It was further stated that instead of implementing the judgment/order dated 16.12.1986, the respondents issued a show-cause notice dated 05.01.1987 (annexure P6) to the petitioner, as to why she be not granted extraordinary leave, for the period from 01.07.1976 to

07.11.1976, for which she was wrongly granted maternity leave. She was further directed to submit her reply to the show-cause notice within 21 days of the issue of communication. She was also asked that if she wanted a personal hearing, with the Director Health & Family Welfare, Punjab, she could do so, after obtaining permission. The petitioner filed reply dated 14.01.1987 (annexure P7) to the said show cause notice. Thereafter, the Director Health & Family Welfare, Punjab, passed the order dated 23.06.1987 (annexure P9), treating the maternity leave from 01.07.1976 to 07.11.1976, wrongly granted to the petitioner, as extraordinary leave and ordered the recovery of the amount, already paid to the petitioner for the period aforesaid. Thereafter, the petitioner made a representation dated 23.02.1988 (annexure P10) that her case of maternity leave be decided like that of Dr.Chanchal Jain PCMS-II, service No.1475. The impugned order dated 23.06.1987, passed by respondent No.2, was stated to be illegal, arbitrary, discriminatory and against the principles of natural justice. When the order dated 23.06.1987 (annexure P9) was not withdrawn, by the respondents, the instant petition for issuance of a writ of certiorari quashing the impugned order (annexure P9) was filed.

2. The respondents, in their joint written statement, admitted that the petitioner joined service on ad-hoc basis on 22.03.1976. Thereafter, her services were regularized. It was stated that she was medically examined on 05.03.1976, on her first entry into service. In the medical certificate, the Medical Board recorded that she had 10 weeks pregnancy. According to the Govt. instructions (annexure P3) the women candidates for recruitment to State services, who at the time of medical examination, on the first entry into Govt. service, are found to be pregnant of 12 weeks-standing, or over, are to be declared

temporarily unfit until the confinement was over. In other words, such persons are not to be recruited to service even on ad-hoc basis, until the confinement was over. It was further stated that while submitting the application for grant of maternity leave, the petitioner furnished a Medical certificate dated 05.07.1976, wherein, it was recorded that she was having seven months pregnancy. This showed that she had intentionally mis-stated the facts in the first instance, at the time of her medical examination on 05.03.1976 by the Medical Board. It was further stated that she very well knew that, in case, she gave the correct information, about her pregnancy, which was more than 12 weeks, she would be declared temporarily unfit and would not be allowed to join duty till she was declared fit after her confinement was over. She, thus, tried to manipulate the facts, about her pregnancy, to her advantage. It was further stated that, thus, she cheated the respondents, and also played fraud with them. It was further stated that the maternity leave was neither due to the petitioner, nor sanctioned to her, by the competent authority. Infact, salary for the period from 01.07.1976 to 06.11.1976, had been wrongly paid to the petitioner, due to over-sight, in the absence of any sanction of the competent authority. It was further stated that the earlier order dated 13.06.1986 (annexure P2), granting extraordinary leave to the petitioner, for the aforesaid period, and for recovery of the amount paid to her, for this period wrongly, was withdrawn, when the petitioner filed writ petition No.4650 of 1986, as no show-cause notice had been given to her, before passing such an order. It was also admitted that the earlier writ petition was, accordingly, dismissed as having become infructuous. It was further stated that thereafter a show cause notice was served upon the petitioner, and after obtaining his reply to the same, which was

not considered to be satisfactory, the period aforesaid, was converted into extraordinary leave, and the amount which was wrongly paid to her, for the said period, was ordered to be recovered. It was further stated that the case of Dr.Chanchal Jain, was not similar to the case of the petitioner. It was further stated that Dr.Chanchal Jain appeared before the Medical Board, at the time of offer of adhoc appointment. She appeared before the Medical Board on 18.03.1977. She was declared medically fit, but she did not join as Medical Officer in PCMS-II upto 27.09.1977. It was further stated that the order dated 23.06.1987 (annexure P9) is legal. It was further stated that it was passed in consonance with the principles of natural justice.

3. I have heard the learned Counsel for the parties and have gone through the record of the case, carefully.

4. The Counsel for the petitioner, at the very outset, contended that the petitioner did not conceal any fact of her pregnancy, at the time of her medical examination, on her first entry into service. He further contended that she did not play any fraud with the department and, as such, she could not be penalized, for no fault of her. He further contended that once the earlier order, treating the period of maternity leave of the petitioner as extraordinary leave, was withdrawn, by the respondents, resulting into dismissal of the writ petition, filed by her, as having become infructuous, subsequent order (annexure P9) could not be passed by the authorities concerned, as they were estopped from doing so. It was further contended that even, in the medical certificate, her pregnancy was shown to be of 10 weeks, and as such, as per the instructions (annexure R1), she was fit to join her duties. It was further contended that since the petitioner did not play any fraud with the respondents, nor did she conceal any fact **CIVIL WRIT**

at the time of her first entry into Govt. service, no recovery of pay could be ordered to be effected from her.

5. On the other hand, the counsel for the respondents contended that it was the duty of the petitioner, to disclose to the Medical Board, at the time of her medical examination, on first entry into Govt. service, regarding the duration of her pregnancy. He further submitted that had she disclosed this fact, to the Medical Board, that she was having pregnancy of more than 12 weeks, she would have been declared as temporarily unfit, to join her duties. It was further submitted that the first order, treating the aforesaid period as extraordinary leave, was withdrawn, by the respondents, as no show cause notice had been served upon the petitioner, before passing the same. He further submitted that after the service of show cause notice, the order dated 23.06.1987 (annexure P9) was passed in accordance with the principles of natural justice.

6. The relevant instructions dated 31.08.1973 (annexure R1/P3) issued by the Punjab Government regarding the admissibility of maternity leave to female Government employees recruited on ad-hoc basis, are extracted as under:-

> "Subject: Grant of maternity leave to female Government employees admissibility of leave in the case of those recruited on temporary/adhoc basis for a limited period.
>
> I am directed to address you on the subject noted above and to say that the question as to whether rule 8.137-A of the Punjab Civil Services Rules Volume-I, part-I, is applicable in the case of female Government employee appointed for a limited period, has been considered in consultation with the

government of India and it is now clarified that the rule referred to above is uniformly applicable to permanent and temporary government employees within the limitations mentioned in Chapter-I of the Punjab Civil Services Rules, Volume-I, Part-I, particularly Rules 1.2 and 1.4. ibid. Accordingly maternity leave may also be granted to such female Government employees as have been recruited, on adhoc basis, for a limited period.

It may, however, be mentioned that the question of grant of maternity leave to female Government employee/during the first 6 months of employment would not arise because women candidates for recruitment to State Services who at the time of medical examination on first entry into Government Service, are found to be pregnant of 12 weeks standing or over, are to be declared temporarily unfit, until the confinement is over. In other words, such temporarily unfit persons, will not be recruited to service, even on adhoc basis, till they are fit for duty after the confinement. This limitation from medical point of view, needs to be kept in view and duly observed."

7. It is clear, from the instructions extracted above, that a female candidate for recruitment to State Service, who at the time of medical examination, on first entry into Government service, is found to be pregnant of 12 weeks standing or over, is to be declared temporarily unfit, until the period of confinement, is over. It was further clarified, vide these instructions, that such a candidate even could not be recruited to service on adhoc basis till

she was declared fit for duty, after the confinement was over. It is evident, from the copy of medical certificate (annexure R3) dated 07.05.1976, that she was found to be having 7th month pregnancy, and was recommended maternity leave w.e.f. 14.06.1976. This certificate was produced by the petitioner, at the time, she applied for maternity leave, referred to above. This certificate also clearly goes to show that her pregnancy was more than 12 weeks at the time of her medical examination, on 05.03.1976, on her first entry into Government service. As per the instructions (annexure R1) extracted above, she was, thus, not entitled, to be recruited, even on adhoc basis, on 05.03.1976 It was with a view to overcome this disability that she made a false statement before the Medical Board on 05.03.1976 that she was having only 10 weeks pregnancy, and this was recorded in the medical certificate (annexure R2) whereas she was having more than 12 weeks pregnancy at that time. It would not be out of place to mention here that at the time of medical examination of a female candidate, on first entry into service, she is not required to undergo any test, with a view to find out the duration of her pregnancy. She, therefore, certainly, played fraud with the Medical Board, and also with the respondents. It was not that she did not make any misrepresentation, before the Medical Board, as a result whereof, she was declared medically fit. It was on account of such a fraud, having been played by the petitioner with the Medical Board as also with the respondents, that she succeeded in proceeding on maternity leave. The submission of the Counsel for the petitioner, in this regard, therefore, being incorrect, stands rejected.

8. As stated above, the first order dated 13.06.1986 (annexure P2) was passed without issuance of show cause notice, to the petitioner. It was under these circumstances, that the same

was withdrawn, when the petitioner filed writ petition and, as such, the writ petition was dismissed as having become infructuous. This stand was clearly taken by the respondents in para No.8 of the written statement, which was not controverted by filing the replication Thereafter, the respondents served a show cause notice dated 05.01.1987 (annexure P6) upon the petitioner and after obtaining her reply dated 14.01.1987 (annexure P7), which was considered to be not satisfactory, that the order dated 23.06.1987 (annexure P9) was passed, treating the aforesaid period, as extraordinary leave instead of maternity leave and ordering the recovery of the amount already, paid to her, for the said period. The respondents were legally competent to pass such an order, even after the withdrawl of the first order. Since the petitioner proceeded on maternity leave, on account of the misrepresentation, made by her, to the Medical Board, as also by playing fraud with the said Board, and the respondents, she could not be allowed to take benefit of her own wrong. In **United India Insurance Company versus Rajinder Singh and others (2003)SCC 582,** the principle of law, laid down, was to the effect, that fraud and justice can not co-exist together. They do not dwel together. No judgment of a Court, and no order of a Minister, can be allowed to stand, if it has been obtained by fraud, for fraud unravels everything. The order dated 23.06.1987 (annexure P9), was passed strictly, in accordance with the principles of natural justice. It is neither illegal nor unconstitutional. The submission of the Counsel for the petitioner, being without merit, must fail, and same stands rejected.

9. Coming to the factum, as to whether, the case of Dr.Chanchal Jain, was similar to the case of the petitioner, it may be stated here, that no material was placed, on the record, by the

petitioner to show such a similarity. On the other hand, in the written statement in para No.12, it was in clear cut terms stated that she appeared before the Medical Board on 18.03.1977 and was declared medically fit to join service, but she did not join as PCMS-II, on adhoc basis. Thereafter, she was offered appointment on regular basis on 29.09.1977. It was, thereafter that she joined the Government service. Even if, it is assumed that she was unfit on 18.03.1977, on account of her pregnancy of 12 weeks or more since she did not join duty, for more than six months, her case was not similar to the case of the petitioner. This stand taken up by the respondents, in the written statement, was not controverted, by the petitioner, by filing the replication. It was, therefore, deemed to have been admitted. Under these circumstances, it could not be said, that the petitioner was discriminated against, vis-a-vis similarly situated persons. On the other hand, the case of Dr.Chanchal Jain, was completely dissimilar to the case of the petitioner. The submission of the Counsel for the petitioner, being without merit, must fail, and the same is rejected.

10. For the reasons recorded hereinbefore, the writ petition is dismissed with no order as to costs.

December 05, 2007 **(Sham Sunder)**
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